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SEP 28 2006

Appl. No. 10/765,,029
Amdt. dated September 27, 2006
Reply to Office Action of July 5, 2006

REMARKS

Claims 1-69 remain in this application. Claims 1-64 are allowed. Claims 65-69 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3224170 (Grenzebach) in view of U.S. Patent 5,272,859 (Pruitt et al.) and EP 0358045 (Ungruh). This rejection is respectfully traversed.

Applicant would like to take this opportunity to thank Examiners Petravick, Torres and Will for the courtesies extended during a personal interview on September 14, 2006. As a result of that interview, agreement was reached that claims 65-69 as appearing in the Preliminary Amendment filed January 26, 2004 are patentable over the art of record.

As explained during the interview, the Grenzebach and Ungruh references disclose machines which merely mow the crop and then dump it directly onto the ground. There are no conditioning rolls in either of these references through which the severed crop materials must be directed. Consequently, Grenzebach and Ungruh do not deal with the problem presented by conditioning rolls wherein the lower conditioning roll has a tendency to reject incoming crop materials, particularly in light conditions.

On the other hand, the invention claimed in claim 65 of the reissue application specifically calls for "a pair of transversely extending, oppositely rotating conditioning rolls disposed within and spanning said discharge opening above and behind the cutter bed for conditioning crop materials received the cutters." It also calls for "a pair of upright, generally cylindrical impellers outboard of each of said opposite ends of the discharge opening" and specifies that each pair of the impellers is "disposed higher than the cutters and rotatable in the same direction as one another such that front extremities thereof move generally inwardly toward the discharge opening."

There is simply nothing in Grenzebach, Ungruh, or any of the other art of record, suggesting or predicting that one skilled in the art could successfully feed conditioning rolls from two pairs of outboard cutters using the structure and relationships set forth in claim 65.

Accordingly, independent claim 65, as amended in the Preliminary Amendment and as now appearing in the same form in the present amendment, is patentable over the prior art of

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record. So also are claims 66-69 which depend directly and indirectly from claim 65 and set forth further details of the invention not shown or suggested by the art of record. Parenthetically, it is noted that claim 68 has been amended slightly from the form as presented in the Preliminary Amendment to change its dependency from claim 65 to claim 67.

Accompanying this response and made a part hereof, pursuant to 37 C.F.R. §1.173(c), is a SECOND STATEMENT OF STATUS AND SUPPORT FOR CHANGES TO CLAIMS. Also submitted is a SUPPLEMENTAL DECLARATION FROM THE ASSIGNEE.

Canadian Patent 2189029 corresponds to U.S. Patent 5,463,852 and is the subject of a pending re-examination proceedings in the Canadian Patent Office. The Requester in that Canadian proceedings is the same party that has filed protests in these U.S. reissues proceedings, namely MacDon Industries Ltd. MacDon's counsel has suggested that MacDon's most recent comments submitted in the Canadian proceedings be submitted in these U.S. reissue proceedings so that the U.S. examiner might be able to consider them in connection with reaching a decision in the U.S. reissue proceedings. Accordingly, enclosed herewith is a copy of REMARKS OF REQUESTER ON RE-EXAMINATION OF A PATENT UNDER SECTION 48.1(1) OF THE PATENT ACT from the Canadian re-examination proceedings received June 20, 2006, together with a transmittal letter from MacDon's counsel dated May 15, 2006.

MacDon's counsel also suggested that an English language translation of EP 00116661 (Maier) be submitted in these U.S. reissue proceedings. Accordingly, a copy of the English language translation of EP 00116661 (Maier) as provided by MacDon's counsel in the Canadian re-examination proceedings is submitted herewith.

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In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited. Any additional fee which might be due in connection with this application should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,

HOVEY WILLIAMS LLP

By 

Stephen D. Timmons, Reg. No. 26,513
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
816/474-9050

ATTORNEYS FOR APPLICANT(S)

(Docket No. 22299REI)